



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenants to obtain monetary compensation for the return of the security deposit and the pet damage deposit (the deposits) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on June 21, 2021.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing took place on September 17, 2021. The tenants also submitted a copy a Canada Post confirmation of delivery containing the landlord's signature to confirm the registered mail was successfully delivered on September 23, 2021

Based on the written submissions of the tenants and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were served on September 17, 2021 and have been received by the landlord on September 23, 2021.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage deposit pursuant to sections 38 and 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant N.V. on June 4, 2013, indicating a monthly rent of \$1,175.00, a security deposit of \$1,175.00, and a pet damage deposit of \$1,175.00, for a tenancy commencing on June 4, 2013
- A copy of an e-mail from the tenants to the landlord dated June 1, 2021, providing the forwarding address
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail at 11:03 pm on June 1, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants and indicating the tenancy ended on May 31, 2021

Analysis

In this type of matter, the tenants must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served "*by any other means of service provided for in the regulations.*"

Section 43(1) of the *Residential Tenancy Regulation* provides that documents "*may be given to a person by emailing a copy to an email address **provided as an address for service** by the person.*"

I find that the tenants have sent the forwarding address by e-mail. However, I find there is no evidence to demonstrate that the landlord indicated documents could be served by e-mail.

I find the tenants have not demonstrated that the landlord's e-mail address was provided for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation*.

For this reason, I find that the forwarding address has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the tenants' application for the return of the security deposit and the pet damage deposit based on the e-mail forwarding address dated June 1, 2021, without leave to reapply.

If the tenants want to apply through the Direct Request process, the tenants may reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the *Act* or, if reissuing the forwarding address by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with section 43(1) of the *Regulation*.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenants' application for the return of the security deposit and the pet damage deposit based on the e-mail forwarding address dated June 1, 2021, is dismissed, without leave to reapply.

The tenants' application to recover the filing fee paid for this application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 20, 2021

Residential Tenancy Branch